

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ERIK D DUDREY**  
Claimant

**APPEAL NO. 07A-UI-10668-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 04/15/07 R: 03**  
**Claimant: Respondent (4)**

Iowa Code section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

**STATEMENT OF THE CASE:**

Kelly Services, Inc., filed a timely appeal from the November 13, 2007, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on December 6, 2007. Claimant Erik Dudrey participated. Nancy Voelker, Senior Supervisor, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One into evidence.

**ISSUE:**

Whether the claimant's voluntary quit was for good cause attributable to the employer. The administrative law judge concludes it was not.

Whether the claimant quit the employment to accept other employment and has performed services for the new employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Eric Dudrey commenced his most recent period of employment with Kelly Services on July 19, 2007. Mr. Dudrey completed a full-time, data entry assignment on September 21, 2007. Mr. Dudrey subsequently accepted a full-time "print department" assignment. The print department assignment duties that required Mr. Dudrey to lift boxes filled with 10 to 12 reams of office paper onto a wheeled cart. The duties also required Mr. Dudrey to monitor several printers and restock them with paper as needed. At the time Senior Supervisor Nancy Voelker offered Mr. Dudrey the assignment, she read the complete job description to Mr. Dudrey. This information included information regarding the lifting duties.

Mr. Dudrey started the new assignment on October 8 and completed one shift in the print department assignment. Prior to his scheduled shift on October 9, Mr. Dudrey advised Kelly Services that the assignment was too physical and asked to be placed in another assignment. Mr. Dudrey indicates that he suffers from Fibromyalgia. Mr. Dudrey also indicates that he has not received any evaluation or treatment for this condition for seven years. Mr. Dudrey did not advise Kelly Services of this condition when he commenced employment and Kelly Services did

not inquire whether Mr. Dudrey had a medical condition that would limit his ability to perform particular work assignments. Pursuant to Kelly Services policy, the temporary employment agency removed Mr. Dudrey from the assignment and agreed to look for another assignment for Mr. Dudrey.

On October 22, Mr. Dudrey notified Kelly Services that he was no longer available for assignments because he had accepted full-time permanent employment with another employer. Kelly Services had not located another assignment for Mr. Dudrey. Mr. Dudrey commenced his new employment on November 5, 2007 and continues in that employment.

Mr. Dudrey did not apply for unemployment insurance benefits until October 19, 2007. The "additional claim" for benefits was effective October 14, 2007. In other words, the claim for benefits did not result from the separation from the assignment, but from the subsequent separation from Kelly Services. Mr. Dudrey received benefits totaling \$717.00 for the three-week period that ended November 8, 2007.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The greater weight of the evidence indicates that the employer fully disclosed to Mr. Dudrey the responsibilities of the print department assignment at the time the employer offered the assignment to Mr. Dudrey. The weight of the evidence in the record fails to support Mr. Dudrey's assertion that he separated from the print department assignment due to a medical condition. The evidence also indicates that Mr. Dudrey's quit from the print department assignment was not based on the advice of a physician. See 871 IAC 24.26(6)(a). Mr. Dudrey's voluntary separation from the assignment was without good cause attributable to the employer.

However, the evidence indicates that neither Mr. Dudrey nor the employer deemed Mr. Dudrey's separation from the print department assignment a separation from Kelly Services. The

evidence indicates instead that both parties acquiesced in Mr. Dudrey leaving the print department assignment and waiting for another assignment.

The evidence indicates that Mr. Dudrey voluntarily quit the employment with Kelly Services on October 22, 2007 and that the quit was without good cause attributable to the employer. The evidence indicates that Mr. Dudrey quit the employment with Kelly Services for the sole purpose of accepting other full-time, permanent employment. The evidence indicates that Mr. Dudrey performed services for the new employer. Pursuant to Iowa Code section 96.5(1)(a), the employer's account will not be charged for benefits paid to the claimant. Pursuant to Iowa Code section 96.5(1)(a), the quit would not disqualify Mr. Dudrey for unemployment insurance benefits. Mr. Dudrey was eligible for benefits, provided he was otherwise eligible.

**DECISION:**

The Agency representative's November 13, 2007, reference 02, decision is amended as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The employer's account shall not be charged. The claimant quit the employment to accept other full-time employment and performed work for the new employer. The voluntary quit from Kelly Services did not disqualify the claimant for benefits. The claimant was eligible for benefits, provided he was otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw